

JAN 25 1989

PLGarlett
CC:INTL:Br2

Vincent Guiliano, Office of District Counsel, Manhattan

Phyllis E. Marcus, Chief, CC:INTL:Br2 *PEM*

Inquiry regarding sections 951(a) and 543.
INTL-0806-88

This memorandum is to confirm the information provided in a telephone conversation between you and Philip Garlett, an attorney in this office.

You have requested the advice of this office about whether an inclusion by a United States shareholder of his pro rata share of a controlled foreign corporation's subpart F income under section 951(a)(1)(A)(i) of the Code can be treated as a dividend and, therefore, as personal holding company income for purposes of section 543(a) for taxable years of the shareholder beginning after 7/18/84.

Section 1.951-1(a)(2) of the Income Tax Regulations provides that for purposes of determining whether a United States shareholder that is a domestic corporation is a personal holding company under section 542, the character of the amount includible in gross income of the domestic corporation shall be determined as if such amount were realized directly by such corporation from the source from which it was realized by the controlled foreign corporation. Also see Rev. Rul. 76-403, 1976-2 C.B. 229, where the amount includible in the gross income of a domestic corporation, whose controlled foreign corporations had an increase in earnings invested in U.S. property, retains the character it had when realized by the controlled foreign corporations for purposes of determining whether the domestic corporation is a personal holding company.

In accordance with the authority cited above, the amount of the subpart F income that is attributable to items of personal holding company income, as defined in section 543, retains its character as personal holding company income in the hands of a United States shareholder for purposes of determining whether the domestic corporate shareholder of the CFC constitutes a personal holding

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company under section 542. Further, because section 542 uses the definition of personal holding company income contained in section 543 to determine status as a personal holding company and because section 543 applies for purposes of determining the amount of tax imposed under section 541, an inclusion in gross income of subpart F income attributable to personal holding company income is treated as retaining its character as personal holding company income for purposes of determining the tax imposed under section 541. Any income of the CFC that is not personal holding company income under section 543 is not personal holding company income when included by the U.S. shareholder under section 951(a)(1)(A)(i).